

PL-11

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES

WASHINGTON, D.C. 20548

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FILE: B-193668

DATE: March 6, 1979

MATTER OF: James R. Parks Company - *CNG-00013* [Request for
Reconsideration of Protest Denial]

DIGEST:

4 Subtracting from bidders' gross prices offered prompt payment discounts which reasonably may be expected to be earned is long-standing practice of Government in evaluating bids and is consistent with statutory requirement that award be made upon that bid which "will be most advantageous to the Government, price and other factors considered."

James R. Parks Company (Parks) requests reconsideration of our decision in James R. Parks Company, B-193668, January 26, 1979, 79-1 CPD, in which we dismissed its protest of the award of a contract under invitation for bids (IFB) DAAA22-79-B-0410 issued by the Watervliet Arsenal, Department of the Army.

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Parks contended that a discount offered by another bidder for prompt payment should not be considered in evaluating bids. Parks viewed such a bid as "neither firm nor fixed" because it is not known at the time of award whether the Government will eventually earn the discount through prompt payment. Since Parks would be the low bidder if the other bidder's offer of a discount for prompt payment were not considered, Parks argued that it should have been awarded the contract.

We viewed the protest as challenging ^{ed} the IFB provision which inferentially provided for consideration of offered prompt payment discounts, and ^{was} dismissed the protest as untimely since it was not filed before bid opening as required by our Bid Protest Procedures. In so doing, we made clear that, in accordance with procurement regulations, a discount for prompt payment must be considered, unless specifically otherwise provided, in evaluating the bids.

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In its request for reconsideration Parks reiterates its contention that a bid offering a discount for prompt payment is not a firm bid and thus the discount should not be considered in evaluation.

Parks is correct in that contracts awarded after formal advertising are to be of the firm fixed price type. Defense Acquisition Regulation (DAR) § 2-104. However, this does not mean that in determining which bid is most advantageous to the Government, the contracting officer is restricted to a comparison of the gross prices offered by the bidders. Other factors may be considered, such as Government costs or expenditures (other than bid prices) to be added or deducted; the administrative costs of making multiple awards and transportation costs. See DAR § 2-201, Section D.

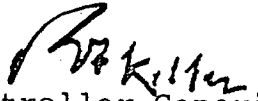
In the same manner, for many years the Government has recognized the practice of offering prompt payment discounts and has provided for the consideration of them in the evaluation of bids. In a 1943 letter to the Secretary of War, for example, we refer to "the long established policy requiring the consideration of discounts offered in determining low bids and awarding Government contracts * * *." Government solicitations are supposed to permit the consideration only of those discounts which it is realistic to expect will be earned through prompt payment. DAR § 2-407.3(a). We assume that is so in the instant case: certainly no bidder has timely objected to the discount provision on that basis. Although the Government does not guarantee that it will pay within the required time period, thereby earning the discount, we believe the probability that it will is sufficiently strong that consideration of the discount is proper.

Thus, it would appear that the action taken by the contracting officer in the present case was fully in accordance with the requirements of the procurement regulations and statutes as well as the terms of the IFB, in that an award shall be made to the responsible bidder whose bid conforms to the invitation and "will be most advantageous to the Government, price and other factors considered."

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We remain of the opinion that Parks' protest is untimely insofar as it concerns the propriety of the solicitation at issue and is otherwise without merit.


Deputy Comptroller General
of the United States